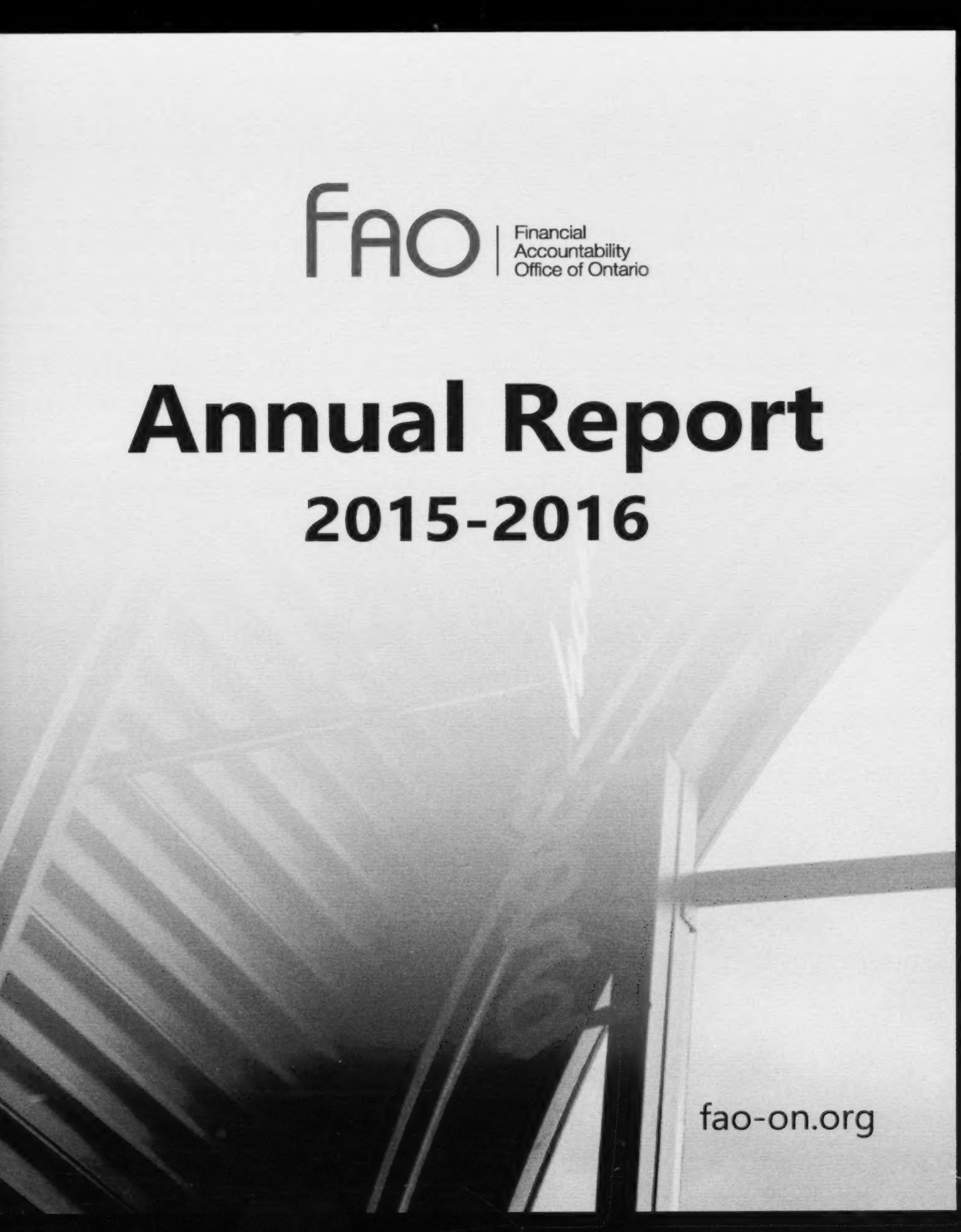
FAO | Financial Accountability Office of Ontario

Annual Report

2015-2016



fao-on.org

FAO | Financial Accountability Office of Ontario

2 Bloor Street West, Suite 900
Toronto, Ontario M4W 3E2

416-644-0702
fao-on.org
info@fao-on.org

© Queen's Printer for Ontario, 2016
ISSN 2369-4289 (Print)
ISSN 2369-4297 (Online)

This document is also available in an accessible format and as a downloadable PDF at fao-on.org

July 2016

The Honourable Dave Levac
Speaker of the Legislative Assembly of Ontario

Room 180, Main Legislative Building
Queen's Park
Toronto, Ontario
M7A 1A2

Dear Mr. Speaker:

In accordance with section 14 of the *Financial Accountability Officer Act, 2013* (the FAO Act), I am pleased to present the 2015–2016 Annual Report of the Financial Accountability Officer for your submission to the Legislative Assembly at the earliest reasonable opportunity.

Sincerely,

Stephen LeClair
Financial Accountability Officer

TABLE OF CONTENTS

Executive summary	1
Independence	3
Mandate and activities	5
Access to information	9
Legislative Assembly and information	19
Reporting and disclosure of information	25
Accountability	27
Financial statement	29
Office organization	31

1 EXECUTIVE SUMMARY

The Financial Accountability Officer (FAO) is an independent officer of the Legislative Assembly of Ontario. His role is to provide the Assembly with the economic and financial analysis it needs to perform its constitutional functions, especially scrutinizing the government's fiscal plan and its implementation over the course of the fiscal year.

Mandate and activities

The FAO performs this role by providing the Assembly with analysis on his own initiative and responding to research requests from MPPs and the committees on which they serve.

In 2015-16, the FAO published two reports resulting from analytical projects he initiated: *An Assessment of the Financial Impact of the Partial Sale of Hydro One*, and *An Assessment of Ontario's Medium-Term Economic and Fiscal Outlook*.

The FAO has begun to receive research requests from MPPs. The FAO has also met with many MPPs, both individually and collectively, to better appreciate their concerns, interests and needs and to understand how their needs can best be met.

Access to information

In 2015-16, the FAO made *six information requests* of ministries and public entities. As of July 2016, four of these requests have been partially fulfilled and two have not been fulfilled.

Ministries have refused to give the FAO information for reasons not grounded in the *Financial Accountability Officer Act, 2013* (the FAO Act). Through his correspondence with ministries and an information request response guide which he has made available to them, the FAO has sought to clarify that ministries may not deny him access to information for reasons not grounded in the FAO Act.

Ministries have also overused the Cabinet records exception, seemingly claiming that all forecasts of future revenue and spending cannot be disclosed

to the FAO if they have not otherwise been publicly released. The broad scope of these claims is making it more costly, difficult and time-consuming for the FAO to perform his duties. The FAO recommends that the government and the Legislature consider making changes to ensure that the FAO has access to all the information he needs to fulfill his mandate.

Legislative Assembly's constitutional functions and access to information

The Legislative Assembly's constitutional functions are to approve the government's plans to raise and spend money, implement those plans by passing the necessary money bills and scrutinize the plans and their implementation over the course of the fiscal year.

To perform these functions, the Assembly needs access to detailed financial information, including forward-looking information that goes beyond the current fiscal year. The Assembly has several tools at its disposal to access the information, but none of them seems to be allowing them to access this sort of forward-looking information. The FAO recommends that the Assembly consider launching a review of the government's disclosure of financial information and the degree to which it responds to their needs.

Budget and staffing

The FAO's approved budget for 2015-16 was $2,249,500; the interim actual spending for the fiscal year was $2,030,743. The FAO spent more than expected on setting up the office and producing reports, but this was offset by lower than expected salary, rent and IT infrastructure costs.

The FAO's approved staffing for 2015-16 was 14 full-time equivalent (FTE) positions. At the end of the fiscal year, the office had 16 positions, but delays in hiring staff meant that the FTE for 2015-16 was approximately nine positions.

2 INDEPENDENCE

The Financial Accountability Officer (FAO) and his staff must be independent from influence by the government of the day in order to provide the Legislative Assembly with the impartial analysis it needs to perform its constitutional functions.

The FAO and his staff must also have sufficient education and experience to ensure that their work is credible and professional. Several provisions of the *Financial Accountability Officer Act, 2013* (the FAO Act) work in concert to bolster and protect the FAO's independence, impartiality and professionalism:

Officer of the Assembly

The FAO is designated as an "officer of the Assembly" by section 2 of the FAO Act.

Appointment

The FAO is appointed under section 2 of the FAO Act by Cabinet on address of the Legislative Assembly. The proposed appointee must first be approved by an opposition-majority panel of three MPPs chaired by the Speaker. This provision ensures that the FAO's appointment has been approved by all recognized parties in the Legislative Assembly.

Terms of service

The FAO serves for a fixed five-year term according to section 2 of the FAO Act and can be reappointed for one additional five-year term. The FAO can only be removed for cause on address of the Assembly. The FAO is also barred from holding any other employment that would conflict with the performance of his duties.

Salary, expenses, budget and staffing

According to sections 3, 5 and 8 of the FAO Act, the FAO's salary and expenses, as well as budget and staffing levels for his office, are approved by the Legislative Assembly's Board of Internal Economy.

In April 2015, the FAO submitted an operating plan and proposed budget for the first two years of his office's work to the Board of Internal Economy for its review and approval. The operating plan and proposed budget are available on the *FAO's website*. The FAO's interim actual expense appears later in the report.

Qualifications of staff

Under section 8 of the FAO Act, the FAO has the power to hire staff for his office. The FAO has staffed his office with employees who have both experience and advanced education in economics or finance. Since many of those with the requisite experience at the provincial level work in Ontario's public service, the FAO hopes to pursue the development of a formal understanding with the Secretary of the Cabinet (and other deputy ministers, as appropriate) to allow for two-to three-year secondments from the public service to the FAO and vice versa.

Terms and conditions of employment

Under section 8 of the FAO Act, the FAO can set the terms and conditions of employment for his staff. The FAO requires that his staff not engage in other work that would interfere with their contribution to the FAO's performance of his duties. As an independent officer of the Assembly, the FAO will establish a distinct code of conduct consistent with the Assembly's own code. For the time being, the FAO requires that his staff respect the Assembly's code of conduct as a condition of their employment.

Immunity

Under section 17 of the FAO Act, the FAO and his staff enjoy immunity from proceedings for any action taken in good faith in the performance of their duties.

Interference and obstruction

Section 18 of the FAO Act provides that the FAO can refer actual or attempted interference with or obstruction of his work by an MPP or their staff, including those employed in a minister's office, to the Speaker of the Legislative Assembly. This provision was added while the bill creating the FAO was before the Standing Committee on the Legislative Assembly with the express intention of providing additional protection for the FAO's independence.

If the FAO were to notify the Speaker under section 18, it would be up to all MPPs to determine how to respond to the notification. However, in light of the relevant precedents, the FAO expects that such a notification could result in an MPP raising a question of privilege.

3 MANDATE AND ACTIVITIES

The Financial Accountability Officer (FAO) has a three-part mandate under sections 10 and 11 of the FAO Act:

1. Providing independent economic and financial analysis to the Legislative Assembly on his own initiative;
2. Responding to requests for economic and financial research received from MPPs and committees;
3. Attending meetings of the Standing Committee on Finance and Economic Affairs and providing assistance to the committee at its request.

Whether on his own initiative or by request, the FAO can direct his office to examine both the broad questions concerning the state of the Ontario government's finances and the province's economy, and more specific questions, including the economic and financial impact of the government's budget, estimates and supplementary estimates, bills before the Assembly, and policy proposals that fall within the Legislature's jurisdiction.

The flexible structure of the FAO's mandate allows the FAO to use his professional judgment to bring significant economic and financial issues to the Legislative Assembly's attention, while also meeting the more immediate needs of MPPs and committees by responding to research and assistance requests.

Since taking office, the FAO has met with MPPs drawn from each of the political parties represented in the Legislative Assembly. Through his meetings with MPPs, many of which were one-on-one, the FAO sought to better appreciate MPPs' concerns, interests and needs and to understand how best the FAO could support MPPs. The FAO looks forward to continuing to ensure that they can easily engage with the FAO and his staff when they have research requests or other questions.

The FAO is mindful of the need to avoid overlap with and duplication of work done by other officers of the Assembly, including the Auditor General and the Environmental Commissioner. The FAO coordinates with his fellow officers to ensure that he is providing relevant and timely economic and financial analysis.

Economic and financial analysis

In 2015-16, the FAO published two reports, which provided economic and financial analysis resulting from projects the FAO initiated.

In October 2015, the FAO published his *Assessment of the Financial Impact of the Partial Sale of Hydro One*. The FAO estimated the market value of Hydro One to be between $11–$14 billion. The FAO projected the initial sale of Hydro One will significantly reduce Ontario's deficit in 2015–16. In subsequent years, the impact on the province's budgetary balance depends on market conditions and the government's policy decisions concerning the repayment of electricity sector debt. Once the province has sold 60 per cent of Hydro One, Ontario's budgetary balance will likely be worse than it otherwise would have been. Although the province's net debt will initially be lower, it will eventually be higher than it would have been without sale.

In November 2015, the FAO published his *Assessment of Ontario's Medium-term Economic and Fiscal Outlook*. This report is the FAO's first review of the province's current economic outlook and the state of the Ontario government's finances. The report provides a framework for future economic and financial analysis and identifies questions that MPPs may wish to raise while scrutinizing the government's fiscal plan.

At his direction, the FAO's Chief Economist and Chief Financial Analyst have, with the assistance of their staff, begun publishing *backgrounders and commentaries* on the FAO's website. Backgrounders provide MPPs with short analyses of policy issues. Commentaries examine economic and fiscal developments, such as major data releases, and provide MPPs with insights on the broader implications they have for the province's economy and the government's fiscal plan. In 2015-16, the FAO published four commentaries examining labour market data, the Ontario Economic Accounts, international trade data and the 2016 Ontario budget.

Economic and financial research requests

The FAO receives and considers research requests from MPPs and committees confidentially. When the FAO accepts a research request from an MPP or a committee, the FAO will develop terms of reference in consultation with the MPP or the committee. The FAO will not reveal the identity of the requesting committee or MPP. The committee or the MPP will, however, be free to identify themselves as the requester of the research.

The FAO is empowered to refuse research requests from MPPs and committees. If the number of requests outstrips the FAO's financial and human resources, the FAO will likely need to exercise his discretion under subsection 10(2) of the FAO Act to refuse requests. If the FAO decides to refuse a request, he will provide written reasons for doing so to the MPP or committee. In future annual reports, the FAO will report on the number of requests received, the proportion refused (if any) and the reasons for refusal. The FAO has released principles, which are based on Canadian and international best practices, which will guide his decision to accept or refuse a research request. These principles are available on the *Financial Accountability Office's website*.

Assistance to the Standing Committee on Finance and Economic Affairs

The FAO anticipates that the Standing Committee on Economic Affairs may request assistance in its pre-budget consultations and consideration of budget

implementation bills and other bills that fall within its remit, as well as any substantive inquiries into economic and financial issues that the committee might choose to undertake. The FAO looks forward to continuing to work with the committee's members, as well as its staff to identify how the FAO and his office can best assist the committee.

The FAO would be pleased to assist other committees when they are considering legislation or conducting substantive inquiries into issues that relate to the FAO's mandate. The FAO may also request to appear before committees considering bills that are related to his mandate.

Proposed reforms to the FAO's mandate

Since the FAO Act was enacted in September 2013, there have been two formal proposals to change the FAO's mandate:

- In February 2014, Douglas Holyday, then-MPP for Etobicoke–Lakeshore, introduced a private member's bill that would have required the FAO to report annually on "areas of public sector delivery in which alternative service delivery may result in the same quality or a better quality of service at a lower cost". The bill was defeated at second reading.
- In February 2016, Catherine Fife, MPP for Kitchener–Waterloo, introduced a bill that, if enacted, would require the FAO to conduct reviews of all "privatizations", procurement processes and public-private partnerships. The Assembly passed Bill 167 at second reading and referred it to the Standing Committee on Finance and Economic Affairs; the committee has yet to take up the bill.

The FAO welcomes proposals that would improve his ability to serve MPPs by providing them with the economic and financial analysis they need to perform their constitutional functions. In particular, the FAO would be pleased to assist any committees studying bills that would alter the scope of his mandate or otherwise amend his enabling legislation.

However, the FAO cautions against proposals that would impose detailed and onerous reporting obligations on the FAO. The flexibility of the FAO's existing mandate allows him to reallocate resources to provide MPPs with analysis that meets their current needs. During clause-by-clause consideration of the bill creating the FAO, the Standing Committee on the Legislative Assembly rejected three proposed amendments that would have imposed statutory reporting obligations on the grounds that they were redundant. Imposing such reporting obligations on the FAO would reduce the flexibility of the FAO's mandate, which could make it more difficult for the FAO to continue to provide the Assembly with timely and relevant analysis, and would require significant additional staff and financial resources.

The FAO and his staff take an interest in a wide range of economic and financial questions of concern to the Assembly, including the potential impact of alternative service delivery, privatization, particular procurement processes and public-private partnerships. For instance, as discussed previously, in October 2015 the FAO published his *Assessment of the Financial Impact of the Partial Sale of Hydro One*. The FAO continues to examine the impact of the government's asset optimization plan on the state of the province's finances. The FAO is also prepared to consider research requests from MPPs and committees to conduct additional research on these matters.

Mission Statement

Strengthen fiscal management in Ontario by providing legislators with relevant and timely analysis.

4 ACCESS TO INFORMATION

The FAO's ability to provide the Legislative Assembly with economic and financial analysis depends on the FAO's access to information held by the Ontario government.

Although some of the economic and financial information the FAO needs to perform his duties is publicly available, much of it is not. The FAO especially needs internal government information to examine the financial impact of a particular government bill or policy measure announced in the budget. The projected impact of implementing a particular bill or measure is incorporated into the government's estimates, but it is almost never specifically broken out. Without access to the government's forecasts of the impact of a specific bill or measure, and related background information, it would be difficult for the FAO to assess whether the government has been sufficiently prudent in its projections and whether there are areas of uncertainty that should be brought to MPPs' attention.

The Legislature recognized the importance of the FAO's access to information, when in section 12 of the FAO Act, it imposed a clear duty on ministries and other public entities to provide the FAO with any information that he requests and considers necessary for the performance of his duties. In the debates on the creation of the FAO, MPPs were clear in their determination the FAO would have access to *all* the information he would need to perform his duties.

While the bill that created the FAO was before the Assembly, the Standing Committee on the Legislative Assembly made several changes to the bill to bolster the FAO's access to information. Most of those changes were supported by MPPs from all three parties represented in the Assembly. The Standing Committee sought to ensure that the exceptions to the duty to provide the FAO with information would be specific and limited, and that the FAO would have access to a parliamentary remedy if denied access to information.

The FAO has worked with the Ontario public service to put in place a process for accessing information. In 2015-16, the FAO proposed a memorandum of

understanding to the Secretary of the Cabinet and the deputy ministers to formalize the process. The FAO continues to believe that a memorandum of understanding, informed by Canadian and international best practices, would provide clear, public guidance on that process. In the meantime, the FAO has produced a guide to help ministries and public entities respond to his information requests, which is available on the Financial Accountability Office's website.

Information requests

In 2015-16, the FAO made six formal information requests. These requests, which usually contain several specific questions, take the form of official correspondence between the FAO and the deputy minister of the ministry (or equivalent in the case of public entities) from which the FAO is requesting information.

Of the six requests the FAO made in 2015-16, as of July 2016, two have not been fulfilled, and four have been partially fulfilled. Although the responses to partially fulfilled requests have in some cases provided the FAO and his staff with more detailed information than what was otherwise publicly available, in others they have not. In most cases where ministries have not fulfilled the FAO's information requests, the FAO has been able to access alternative sources of information and develop alternative approaches to analysis, but doing so is often costly and time consuming and can result in less precise results. The ministries' reluctance to provide the FAO with access to information has made it difficult for the FAO to provide MPPs with the analysis they need to hold the government to account.

In all but one case, the ministries from which the FAO has requested information have cited the Cabinet records exception as the justification for refusing to fulfill all or part of an information request. As discussed below, the FAO is growing increasingly concerned that ministries are overusing the Cabinet records exception, and believes that the government and, potentially, the Legislature may need to take steps to ensure that the exception is being appropriately used.

In some cases, ministries also provided justifications for refusing access to information that were not grounded in the FAO Act. The FAO understands that his is a new office and that it will take time for ministries to become familiar with his mandate and the scope of his access to information. As a result, he has made it clear, both in his correspondence with ministries and his information request response guide, that ministries and public entities may not deny the FAO access to information for any reasons not grounded in the FAO Act. In particular, the FAO has explained to ministries that they cannot deny him access to information that is considered commercially sensitive, that has not yet been publicly released or that concerns a bill currently before the Legislature.

Exceptions to ministries' duty to provide information

There are only three exceptions to the FAO's power to access information from ministries and public entities. Only one – the Cabinet records exception – has so far been used by ministries in their responses to the FAO's information requests.

1. Cabinet records exception

The FAO cannot access information that is considered a "Cabinet record" for the purposes of section 12 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).[1]

1 RSO 1990, c F.31.

The FAO recognizes the importance of protecting Cabinet confidentiality. However, the FAO believes that ministries are claiming that the Cabinet records exception applies to too wide a range of information. Unlike an individual making an information request under FIPPA, the FAO cannot appeal the ministries' use of the exception to the Information and Privacy Commissioner. As an officer of the Assembly, it is his belief that the overuse of the exception, which seemingly goes beyond the scope of what MPPs anticipated when they created his office, should be brought to the Assembly's attention.

i. Purpose and scope of exception

Generally, a Cabinet record is one whose disclosure "would reveal the substance of deliberations of the Executive Council or its committees." The Executive Council is composed of the Premier and the other ministers, and is better known as the Cabinet. The Cabinet, in turn, is organized into committees, including the important statutory committees known as Treasury Board and Management Board of Cabinet.

The Cabinet records exception serves the purpose of protecting the confidentiality of Cabinet deliberations. In Ontario's system of government, ministers bring proposed policies and legislation to their colleagues in Cabinet to deliberate and ultimately decide whether to pursue them. In some cases, they must also seek the approval of Cabinet committees before going to full Cabinet; in other cases, Cabinet has delegated the responsibility for making certain decisions to those committees.

During Cabinet deliberations, ministers can and do disagree with one another, but once Cabinet has made a decision, all ministers are expected to publicly defend and implement the decision. Cabinet confidentiality,

Freedom of Information and Protection of Privacy Act

Exemptions

Cabinet records

12. (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

(a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;

(b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

(c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;

(d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and

(f) draft legislation or regulations.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

(a) the record is more than twenty years old; or

(b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

Ministries seem to have taken the position that virtually any projection of future revenue and spending that has not been otherwise publicly released is a Cabinet record.

as the Supreme Court has recognized, allows ministers to be candid during Cabinet deliberations and shields them from political criticism for initially taking positions at odds with what Cabinet ultimately decides.[2]

There are specific categories of documents that are also designated as Cabinet records by paragraphs 12(1)(a) through (f) of FIPPA. Some of these categories serve to protect the positions taken by ministers before and during Cabinet deliberations. Others serve to protect the integrity of the Cabinet decision-making process by ensuring that the materials under deliberation are not released before Cabinet has had a chance to consider them.

FIPPA is a distinct piece of legislation from the FAO Act. It creates an individual right to access information. That right is made subject to certain limits, including the exemption for Cabinet records. FIPPA allows an individual to appeal a ministry's decision to deny them access to information to the Information and Privacy Commissioner. In deciding these appeals, the Information and Privacy Commissioner and, to some extent, the courts who can review the Commissioner's decisions, have interpreted FIPPA. Since the definition of "Cabinet records" from FIPPA is incorporated into the FAO Act, the FAO and the ministries from which he requests information are bound by the Commissioner's interpretations of FIPPA.

The Information and Privacy Commissioner has broadly interpreted the general definition of Cabinet records identified in subsection 12(1) of FIPPA. The Commissioner has held that a record would reveal the substance of Cabinet deliberations if it allows the drawing of accurate inferences about the substance of those deliberations.[3] Likewise, the Commissioner has concluded that a record that has not been put before Cabinet can still be considered a Cabinet record if there is a sufficient connection between its content and the actual substance of Cabinet deliberations.[4]

ii. Limitations on exception

Despite its broad scope, the Cabinet records exception is subject to several important limitations.

The exception is time-limited under paragraph 12(2)(a) of FIPPA. The exception does not apply to records that are more than 20 years old. Since the FAO's work is largely forward-looking, having access to Cabinet records that date back 20 years is unlikely to help the FAO meet the present needs of the Assembly.

However, specific categories of Cabinet records are subject to significantly shorter time limits. For instance, a record that "does not contain policy options or recommendations...and that does contain background explanations or analyses of problems submitted,

2 *Carey v Ontario*, [1986] 2 SCR 637; *Babcock v Canada*, 2002 SCC 57.

3 Order P-226 (Re Ministry of Consumer & Commercial Relations; March 26, 1991).

4 Order PO-2320 (Re. Ministry of Finance; September 13, 2004).

or prepared for submission, to the [Cabinet] or its committees for their consideration in making decisions" is no longer protected by virtue of paragraph 12(1)(c) of FIPPA once the decision in question has been made and implemented. Cabinet's decision-making process often involves deciding whether and when to announce a policy in the budget or introduce a piece of legislation. Accordingly, the Ontario government's own Freedom of Information manual explains that a Cabinet decision about whether to introduce a piece of legislation has been both made and implemented once the bill has been introduced in the Assembly.[5]

The exception does not apply if Cabinet consents to the release of information under paragraph 12(2)(b) of FIPPA. The Information and Privacy Commissioner has held that, for the purposes of FIPPA, a minister has to consider whether to seek Cabinet's consent and has discretion to decide whether to do so based on the likelihood that Cabinet will consent[6]. The possibility of Cabinet consenting to the release of information is expressly referenced in the FAO Act, which suggests that ministers' responsibility to consider whether to seek Cabinet's consent extends to the FAO's information requests.

Ministries must provide the FAO with any information that can be severed from what would otherwise be a Cabinet record. Once a Cabinet decision has been made and implemented, the policy options and recommendations that Cabinet considered remain confidential. However, the portion of the Cabinet submission providing background information and analysis for the purposes of paragraph 12(1)(c) of FIPPA no longer falls under the Cabinet records exception; the ministry is therefore required to provide that information and those analyses to the FAO in response to a request made under subsection 12(1) of the FAO Act.

The exception does not apply to information that might otherwise be considered a Cabinet record, but which has already been published in response to a procedural or statutory requirement. For instance, the publication of the costing of tax expenditures required by the *Fiscal Transparency and Accountability Act, 2004* involves the release of information that might otherwise be considered a Cabinet record. As is discussed later in this report, the FAO encourages MPPs to examine the scope of information routinely released by the government and to consider whether it might be wise to increase procedural and statutory requirements for disclosure. The greater the scope of routine disclosure, the less the FAO will need to rely on his power to access information and the better he will be able to provide MPPs with timely and relevant analysis.

iii. Overuse of exception

In their responses to the FAO's information requests, ministries have relied on the Cabinet records exception to justify withholding a wide range of information. The FAO has made several arguments aimed at narrowing the interpretation that ministries have given to the Cabinet records exception, including that, once a Cabinet decision has been made and implemented through a policy announcement or introduction of a bill, the FAO should have access to background information and analyses. These arguments have so far been unsuccessful and ministries continue to make broad claims of Cabinet confidentiality.

Moreover, ministries cannot use the Cabinet records exception to prevent the disclosure of information that falls under one of the other exemptions laid out in FIPPA, such as public servants' advice or

5 Ministry of Government and Consumer Services, *Freedom of Information and Privacy Manual* (https://www.ontario.ca/document/freedom-information-and-privacy-manual/exemptions#section-1).

6 Order 24 (Re Ministry of the Attorney General; October 21, 1988).

recommendations to government under section 13 of FIPPA. Under subsection 12(1) of the FAO Act, the FAO has access to all information that would be exempt from disclosure under FIPPA, unless it falls under one of the three specific exceptions to the FAO's access to information.

Ministries seem to have taken the position that virtually any projection of future revenue and spending that has not been otherwise publicly released is a Cabinet record. As a result, where the FAO decides to examine a projection provided in the budget or the estimates, ministries are likely to deny him access to any underlying information and models that would allow him to provide the Assembly with the assessment of the projection. The same problem arises when the FAO attempts to examine the projected cost of implementing a bill.

For instance, the 2015 budget announced sale of up to 60 per cent of Hydro One. The Premier's Advisory Council on Government Assets estimated Hydro One's value to be $13.5-$15 billion. Seeking to assess the financial impact of the partial sale of Hydro One, the FAO requested more detailed information on the government's valuation estimate and the resulting financial impact of the partial sale. The Ministries of Energy and Finance refused to provide the requested information because they claimed it fell under the Cabinet records exception. Cabinet's decision to sell Hydro One had been made and implemented, that is, announced and shortly thereafter, statutorily authorized through amendments to the *Electricity Act, 1998*. Any background information and analyses should accordingly have been disclosed to the FAO.

In the *2015 Economic Update and Fiscal Review*, the government announced a $134 billion, 10-year infrastructure plan. Seeking to assess the economic and financial impact of the specific projects funded by that plan, the FAO requested information concerning the capital cost, fiscal impact and economic impact for the projects. Although the Treasury Board Secretariat provided some high-level information, it did not provide project-by-project information on the grounds that it "forms part of the advice and analysis presented" to the Treasury Board and Management Board of Cabinet. As with the information concerning the sale of Hydro One, once these committees decide and implement the project, the FAO should have access to the background information and analyses, including estimates of economic and financial impact.

Likewise, the 2016 budget projects that Ontario's health sector spending for 2017-18 and 2018-19 will be $52.8 billion and $53.7 billion, respectively. Seeking to assess the likelihood that health sector spending might end up being higher than forecast, the FAO requested projected spending for 2017-18 and 2018-19 by program area. This information would have allowed the FAO to assess whether the government's health spending projections rested on overly optimistic assumptions about restraining growth in specific health sector programs. The Ministry of Health and Long-Term Care and the Treasury Board Secretariat refused to provide the requested information, because they claimed it fell under the Cabinet records exception.

Ministries justify their use of the Cabinet records exception in this way by claiming that disclosing the projections would reveal the substance not only of past, but also future deliberations of Cabinet. There is little doubt that Cabinet does and will continue to hold deliberations on future public expenditure and revenue. However, the information that the government provides to the Assembly in the budget, estimates and

other major financial documents, is based on forecasts that incorporate Cabinet decisions that have been made and which are usually announced either in the spring budget or Fall Economic Statement and reflected in government bills introduced in the Assembly. Without access to these forecasts, it is considerably more difficult for the FAO to provide the sorts of economic and financial analysis to the Assembly that it needs to perform its constitutional functions.

iv. Recommendations for narrowing exception

FIPPA and the FAO Act have distinct purposes and features. The Legislature gave the FAO the power to access information to ensure that he has the information he needs to provide the Assembly with analysis in support of the performance of its constitutional functions. Unlike an individual making an information request under FIPPA, the FAO is subject to disclosure restrictions that restrict the release of information unless it is essential for the performance of his mandate and the information falls outside certain sensitive categories. The FAO is also accountable for the use of his information to the Standing Committee on Finance and Economic Affairs and, as an officer of the Assembly, to the Assembly as a whole.

Given these significant differences, it is important that the definition of "Cabinet records" drawn from FIPPA not be used to undermine the FAO's ability to perform his duties. Since the FAO cannot appeal a ministry's use of the Cabinet records exception to the Information and Privacy Commissioner, the scope of the exception must be as clear and well defined as possible. The FAO would be pleased to work with government to ensure that he can access the information that he needs to support MPPs in performing their constitutional functions, while continuing to provide appropriate protection for Cabinet confidentiality. The FAO recommends that the government and, if necessary the Assembly consider making the following changes:

The Cabinet should ensure that the Cabinet papers system allows the release of information necessary for the performance of the FAO's duties. The challenges faced by the FAO in terms of accessing information may stem from the way in which Cabinet papers are formatted. To the degree that policy options and recommendations concerning a decision are inseparable from background information and analysis in support of that decision, it may be difficult to release the latter without releasing the former. The FAO raised this concern during his testimony before the Standing Committee on General Government on Bill 172, which has since been enacted as the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, and continues to believe that it must be addressed.

The Cabinet should consent to the FAO having access to the information he needs. The Cabinet could formally consent under paragraph 12(2)(b) of FIPPA. Doing so might, however, create an unwanted precedent and open up the possibility that an individual making an information request under FIPPA could also get access to the information by relying on Cabinet's prior consent. As a result, Cabinet may instead prefer simply to provide the FAO with the information he needs to perform his analysis. Doing so would not likely create a precedent for FIPPA purposes. In 1995, an Information and Privacy Commissioner order acknowledged the possibility of Cabinet sharing Cabinet papers with a third party without allowing others to claim prior consent to the disclosure of those records under FIPPA.[7] The same principle should apply if Cabinet were to agree to provide the FAO with background

7 Order P-956 (Re. Ministry of the Solicitor General & Correctional Services; July 19, 1995).

information and analyses concerning Cabinet decisions that have been made and implemented.

At the federal level, the Auditor General's scope of access to Cabinet confidences is defined by order-in-council.[8] The federal Auditor General has access to Cabinet confidences that relate to public expenditure, including submissions to Cabinet and Treasury Board, the decisions of those bodies, as well as "explanations, analyses of problems or policy options." The Auditor General does not, in keeping with the core principles of Cabinet confidentiality, have access to "views, opinions, advice or recommendations" of ministers. Working with the Privy Council Office and the Treasury Board Secretariat, the Auditor General has put in place a process that allows his auditors to access information contained in Cabinet confidences when it is necessary to conduct an audit.[9]

In Ontario, the Cabinet could adopt a similar order-in-council granting access to the equivalent Cabinet records that relate to public expenditure and revenue. The FAO could then work with the Cabinet Office and Treasury Board Secretariat to put in place a process for accessing the information contained in those records. The FAO would be pleased to work with the government to better understand the functioning of the Cabinet papers system and to identify the specific categories of information contained in the Cabinet papers to which he requires access.

The Legislature should consider amending the FAO Act to ensure that the FAO has access to the information he needs. The federal and provincial Auditors General normally have access to Cabinet records they need to perform audits. As mentioned previously, at the federal level, the scope of the federal Auditor General's access to Cabinet confidences is determined by order-in-council. The Legislature could specify the categories of Cabinet records to which the FAO would have access along similar lines. Doing so would ensure that the FAO could access background information and analyses, while continuing to provide adequate protection for Cabinet confidentiality.

Although Auditors General have a largely backward-looking mandate, conducting financial and performance audits of government and broader public sector institutions, they can also examine the kind of forward-looking information that the FAO needs to perform his duties. For instance, section 10 of the *Fiscal Transparency and Accountability Act, 2004*, requires Ontario's Auditor General to review the pre-election report on the province's finances, in which the Ministry of Finance sets out forward-looking information on the state of the province's finances and trends in the provincial economy. In order to review the pre-election report, the Auditor General can exercise her normal powers to access information, including information contained in what would otherwise be Cabinet records.[10] It is precisely this kind of forward-looking information that ministries are currently unwilling to provide to the FAO.

The Ombudsman also has access to what would otherwise be Cabinet records unless the Attorney General certifies that the release of information would involve the disclosure of the actual deliberations of Cabinet or its proceedings on secret and confidential matters.[11] The Provincial Advocate for Children and Youth also has access to Cabinet confidential information on similar terms.[12]

8 PC 1985-3783; PC 2006-1289.

9 Office of the Auditor General of Canada, *Performance Audit Manual*, Section 1180 (http://www.oag-bvg.gc.ca/internet/methodology/performance-audit/manual/1180.shtm).

10 Office of the Auditor General of Ontario, *The Auditor General's Review of the 2011 Pre-Election Report on Ontario's Finances*, pp. 10–11.

11 *Ombudsman Act*, RSO 1990, c O.6, s 20.

12 *Provincial Advocate for Children and Youth Act, 2007*, SO 2007, c 9, s 16.3(1).

Catherine Fife, MPP for Kitchener-Waterloo, recently introduced a private member's bill that would repeal the Cabinet records exception. The FAO welcomes efforts on the part of MPPs that seek to improve his access to the information he needs to provide MPPs with analysis in support of their constitutional functions. If Bill 208 passes at second reading and is referred to committee, the FAO would be pleased to provide MPPs charged with studying the bill with his specific advice on its provisions.

2. Personal information and personal health information exception

The FAO also cannot access personal information and personal health information, which are defined in the *Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act, 2004*, respectively. The exception covers various kinds of information about an identifiable individual.

When considering the legislation that created the FAO, the Standing Committee on the Legislative Assembly added subsection 12(4) of the FAO Act, which requires ministries to redact personal information and personal health information. The express intention of this amendment was to maximize the amount of information that ministries can provide the FAO.

3. Hydro One exception

A third exception to the FAO's power to access information, preventing the FAO from accessing information held by Hydro One, contained in section 16.1 of the FAO Act, came into force in December 2015. The FAO and seven other independent officers of the Assembly issued a public statement opposing the new exception when the bill that created it was before the Legislature in April 2015. *A copy of the statement is available on Financial Accountability Office's website.*

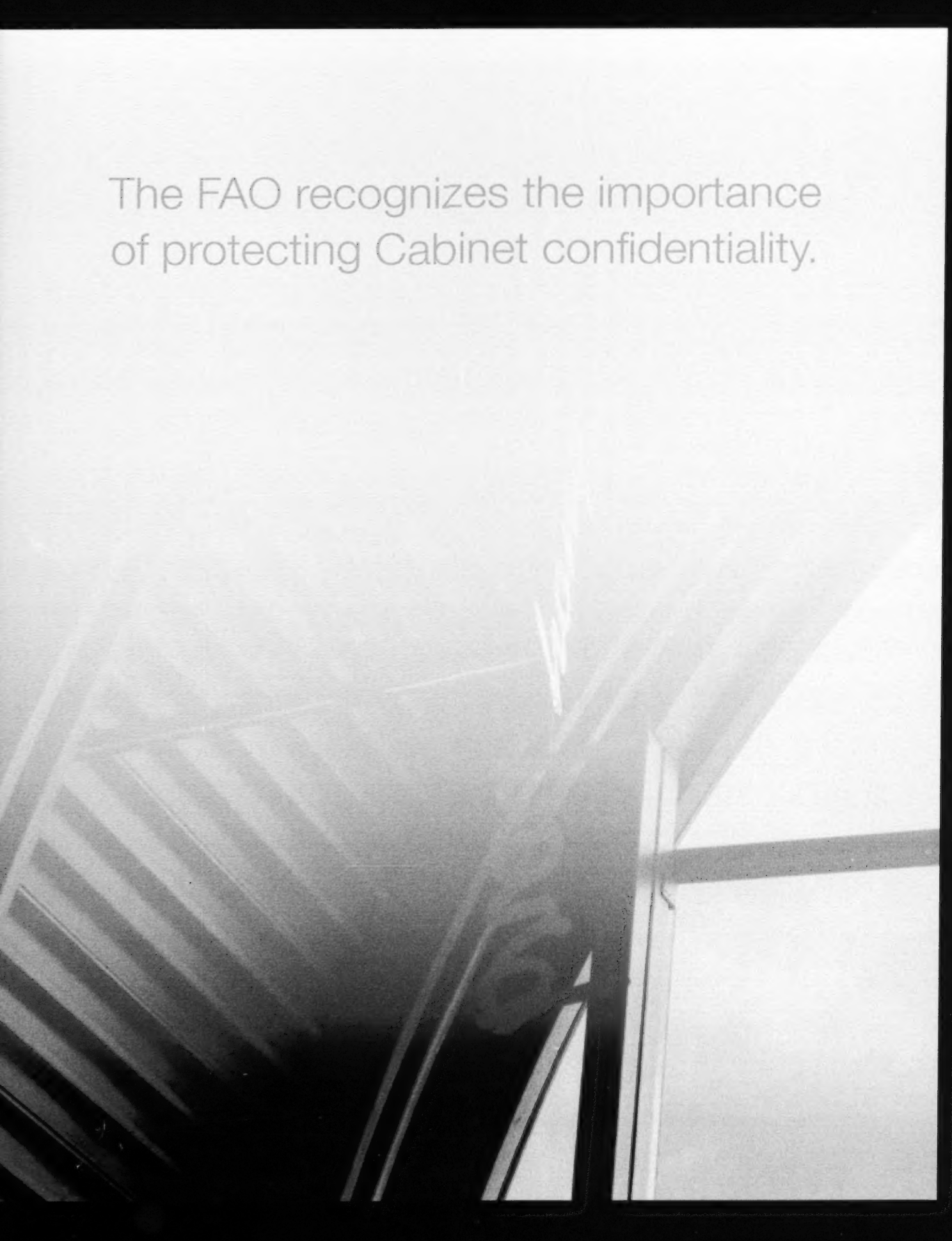
Remedy for failure to comply with information request

The FAO can notify the Speaker of the Legislative Assembly and the chair of the Standing Committee on Finance and Economic Affairs if he is of the opinion that a ministry or public entity has failed to comply with an information request. The FAO's remedy for a ministry or public entity's failure to comply with an information request by virtue of subsection 12(5) of the FAO Act was added when the bill creating the FAO was before the Standing Committee on the Legislative Assembly and reflects MPPs' determination that the FAO have access to all information necessary to perform his duties.

The FAO is prepared to notify the Speaker and committee chair if a ministry or public entity fails to provide information in a timely manner, improperly invokes one of the exceptions under the FAO Act or claims that it cannot provide information for any other reason. If the FAO were to notify the Speaker and committee chair, it would be up to all MPPs to determine how to respond to the notification. However, in light of the precedents, especially the Speaker's ruling that followed the Information and Privacy Commissioner's 2000 report on the Province of Ontario Savings Office, the FAO expects that such a notification could result in an MPP raising a question of privilege.[13]

13 Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 37th Parl, 1st Sess, No 61 (18 May 2000) (Hon Gary Carr) (http://hansardindex.ontla.on.ca/hansardeissue/37-1/l061.htm).

The FAO recognizes the importance of protecting Cabinet confidentiality.



5 LEGISLATIVE ASSEMBLY AND INFORMATION

Legislative Assembly's constitutional duties and access to information

In his first annual report, the FAO explored the origins of his office and identified some of the concerns that motivated its creation, concluding that the FAO's role is to assist the Assembly in performing its constitutional functions when it comes to public money. Since his appointment in February 2015 and especially over the course of the past year, the FAO has put in place policies and processes intended to best allow him to fulfill this role as an officer of the Assembly.

As explained previously, the FAO has faced unexpected challenges in accessing information. In this annual report, the FAO seeks to bring those challenges to the attention of MPPs as they make it more difficult for him to perform his duties and by extension, support the Assembly's performance of its constitutional functions. However, the FAO has also come to believe that these challenges are symptomatic of a larger problem: the Assembly, whether directly or through its officers, including the FAO, lacks access to the full range of information it needs to perform its constitutional functions.

Assembly's constitutional functions

The Assembly has three major constitutional functions when it comes to public money.

The Assembly approves the government's plans to raise and spend money. The Assembly cannot, however, substitute its own preferences about how to raise money or what to spend it on for those of the government. But if the Assembly does not approve the government's fiscal plan, the government is expected to resign and the Lieutenant Governor would normally be expected to dissolve the Assembly for a general election.

The Assembly implements the government's fiscal plan by passing the necessary money bills.
Budget implementation bills make any necessary changes to the tax system and allow the government to borrow money; supply bills appropriate money to ministries for the various specific programs they operate. Once the Assembly passes the bills, the

Lieutenant Governor gives the bills royal assent and they are enacted into law.

The Assembly studies the government's fiscal plan and associated money bills when they are before the Assembly, and scrutinizes the government's efforts to implement them over the course of the fiscal year. The Assembly does so by selecting certain ministries' estimates for study, and by taking up the Auditor General's annual report and examining the public accounts. The Assembly also does so by referring budget implementation and other bills to committee for study, and by calling ministers and public servants to testify before committees on their ministries and the programs they operate.

When a government enjoys the support of a disciplined majority in the Assembly, as is currently the case, the adoption of its fiscal plan and its implementation through the necessary legislation is nearly a foregone conclusion. By contrast, a minority government must negotiate with opposition caucuses to secure their support for its plans and thereby ensure that it can remain in government. But no matter the composition of the Assembly, all of its members who are not serving as ministers, whether sitting in the government or opposition benches, are responsible for scrutinizing the government's plans over the course of the fiscal year.

Financial scrutiny is a challenging and multi-faceted task. The Assembly needs to ensure that the government has made a responsible fiscal plan, based on prudent economic and financial projections, and that the government updates it as needed in light of economic and financial developments. The Assembly has to examine the government's major policy announcements and bills, as well as the activities of ministries and other public entities, over the course of the year to ensure that they are consistent with that plan. The Assembly must ultimately ensure that the government is respecting its will, raising and spending money only in the ways the Assembly has authorized.

The Assembly needs access to information to perform these constitutional functions. To approve and implement the government's plans, the Assembly needs to know specifically what the government proposes to do and to appreciate the economic and financial context in which the government is making its policy choices. Likewise, to scrutinize those plans and their implementation, the Assembly must have access to both general information about the state of the province's finances, and specific information about the money allocated to various programs, as well as the performance expected of and realized by them.

The Assembly and, by extension, its officers, especially the Auditor General and Financial Accountability Officer, obtain much of the information they need through the routine tabling of information by the government. However, since the government prepares its fiscal plan and is responsible for its implementation, it has significantly more detailed information at its disposal than does the Assembly. As a result of the asymmetry between the information available to government and the Assembly, the Assembly's ability to perform its constitutional functions, especially its scrutiny function, would be limited if it did not have access to additional sources of information that allow it to verify and challenge the information provided by the government.

Assembly's tools for accessing information

The Assembly has several tools it can use to access the information it needs to perform its constitutional functions.

Statutory and procedural disclosure requirements

The Assembly can, as a matter of parliamentary procedure, and the Legislature can, by statute, require the government to provide the Assembly with information. The major stages of the parliamentary financial cycle, such as the introduction of the budget; tabling, consideration and passage of the estimates; and tabling of the public accounts fulfill procedural and statutory requirements to provide the Assembly with information.

The advantage of a procedural requirement over a statutory one is that the former can be enforced by the Speaker. The Speaker cannot enforce statutory disclosure requirements, which are found largely in the *Financial Administration Act* and the *Fiscal Transparency and Accountability Act, 2004*. For their part, the courts are reluctant to get involved with parliamentary procedure and political disputes, likely including compliance with tabling requirements.

The limitation of both procedural and statutory disclosure requirements is that the government enjoys a great deal of discretion about the quantity and quality of the information it discloses in fulfillment of those requirements. The Ontario government releases less detailed information than do other governments in jurisdictions whose system of government resembles Ontario.

For instance, section 5 of the *Fiscal Transparency and Accountability Act, 2004* requires the Ontario government to provide the Assembly with "estimates of the major components of the revenues and expenses" for the current fiscal year and the next two years in the budget papers. However, for the purposes of section 11.6 of the *Financial Administration Act*, the Estimates need only include specific revenues and expenses for the next fiscal year. Although Standing Order 65 requires that ministries whose Estimates are selected for consideration by the Standing Committee on Estimates provide additional briefing material to MPPs who serve on the committee, a 2012 examination of the Estimates review process by the Auditor General found that the material includes little information about future spending projections.

The Alberta government, like that of Ontario, provides specific revenue and spending forecasts for the current fiscal year its estimates. However, Alberta's *Fiscal Plan* and each ministry's business plan also presents detailed revenue and spending for the current fiscal year and the next two years in a form determined by Alberta's Treasury Board. Likewise, the federal government publishes projections for revenue and spending by department for the next two fiscal years in the *Reports on Plans and Priorities*, which are presented in Part III of the *Main Estimates*. Australia's *Portfolio Budget Statements*, which are its equivalents of the federal government's *Reports on Plans and Priorities*, provide projections for revenue and spending by department for the next three fiscal years, as required by statute.

Moreover, the Ontario government incorporates the impact of new policies into the budget and Estimates, but it often does not provide a breakdown of the specific projected impact of the measures. Section 6 of the *Fiscal Transparency and Accountability Act, 2004* requires the government to provide the Assembly with "information about the estimated cost of expenditures that are made through the tax system." However, the Ontario government does not provide projections for future fiscal years, nor does it detail the assumptions and uncertainty associated with its costing.

For its part, the United Kingdom government publishes

a costing for each new measure announced in the budget. The publication of the costings is required by a quasi-statutory instrument, the *Charter of Budget Responsibility*. The costings follow a standard format, providing a specific description of the measure, an explanation of the method used to estimate its cost (including efforts made to account for the behavioural response to new policy), the costing over the coming five years and a description of any areas of uncertainty. The United Kingdom government's budget papers also explain the assumptions made to incorporate each new measure into the government's overall fiscal forecast. The United Kingdom's Office of Budget Responsibility (OBR), roughly equivalent in function to the FAO, then assesses the government's costings based on the level of uncertainty resulting from the quality of the modelling, the availability and quality of data used, and the information available on behavioural responses to the measure. For certain larger policy measures, the OBR also considers the economic impact that they may have.

To the degree that the Legislative Assembly has less access to forward-looking financial information than do legislative bodies in other jurisdictions, it is more difficult for the Assembly to perform its constitutional functions. This is especially true of its scrutiny function by making it more difficult for the Assembly and its officers, including the FAO, to identify future risks and areas of uncertainty.

Oral and written questions

MPPs can ask questions of ministers orally in Question Period and in writing by making a formal "enquiry of the Ministry."[1] Ministers have the discretion to refuse to answer oral and written question for any reason. However, in answering questions, ministers are often forced to justify government policy and in doing so, sometimes provide information that is more detailed than that provided in response to procedural and statutory disclosure requirements.

Committee proceedings

MPPs can also ask questions of ministers in their capacity as members of standing and select committees. Committees can call ministers, deputy ministers and other senior public servants to testify.

Some committees do so frequently. For instance, the ministers whose ministries' estimates have been selected for consideration by the Standing Committee on Estimates appear before that committee, along with their deputy ministers and other ministry officials. Likewise, the Standing Committee on Public Accounts, which reviews the Auditor General's annual report, hears testimony from deputy ministers and other senior public servants whose ministries were audited. Most other committees, however, do not call ministers or their officials to testify.

In the Legislature's current session, ministers have introduced 56 bills in the Assembly. Of the 48 government bills that have since been enacted into law, 41 were referred to committee for detailed consideration. None of those committees called any ministers or public servants to testify on the bills. Some of the bills involved relatively modest changes to provincial law and will likely have limited economic and financial impact, but others, such as the bills to allow the partial sale of Hydro One and create the province's cap-and trade-program, could have much more significant impact. In other jurisdictions, notably at the federal level, committees routinely call ministers and public servants to testify on bills. By failing to call ministers and public servants to testify before them on the implementation of these bills, committees are less able to examine and challenge the government's

1 Standing Order 37. The term "Ministry" as used in the Standing Order means the government, rather than any particular ministry or minister, although written questions are generally addressed to a specific minister.

forecasts of the economic and financial impact of those sorts of policies.

Moreover, although the policy field committees – the Standing Committees on Justice Policy, Social Policy and General Government – can perform general reviews of the management and operations of the ministries assigned to them, they have not chosen to do so.[2] During the current session, only the Justice Policy committee has published a substantive report. Although the ministries assigned to these committees are subject to some scrutiny through the Standing Committees on Estimates and Public Accounts, they have not been subject to the sort of in depth, ongoing scrutiny that policy field committees provide in other jurisdictions. At the federal level, for example, regular testimony before Senate and House of Commons committees by ministers and senior public servants on policy issues facing their departments is an important source of information and serves as the basis for more detailed scrutiny of legislation and spending plans affecting the departments.

Committees also have the power to order the production of information.[3] This power is theoretically unlimited, and as recent rulings by the Speaker of the House of Commons have made clear, extends to some types of information that would otherwise be a Cabinet record, including forecasts of the financial impact of a bill. If someone refuses to provide the committee with requested information, the committee can refer the matter to the Assembly, which can in turn compel the production of information. The failure to comply with an order for the production of information gives rise to a question of privilege.

Officers of the Assembly

Although the principal function of officers of the Assembly, including the Auditor General and Financial Accountability Officer, is to assist the Assembly in performing its scrutiny function, the Legislature has recognized that these officers will often need access to additional government information to perform their duties. Accordingly, both the Auditor General and FAO have statutory powers to access information, though the Auditor General has access to a wider range of information than does the FAO. In particular, as was discussed previously, the FAO lacks access to detailed forward-looking financial information, which ministries claim falls under the Cabinet records exception.

Neither the Auditor General nor the FAO release raw information to the Assembly, but instead provide analysis based on the information they obtain from ministries. Through their work, however, both the Auditor General and the FAO help better inform the Assembly and may encourage the government to be more forthcoming in its future routine disclosures of information and responses to questions.

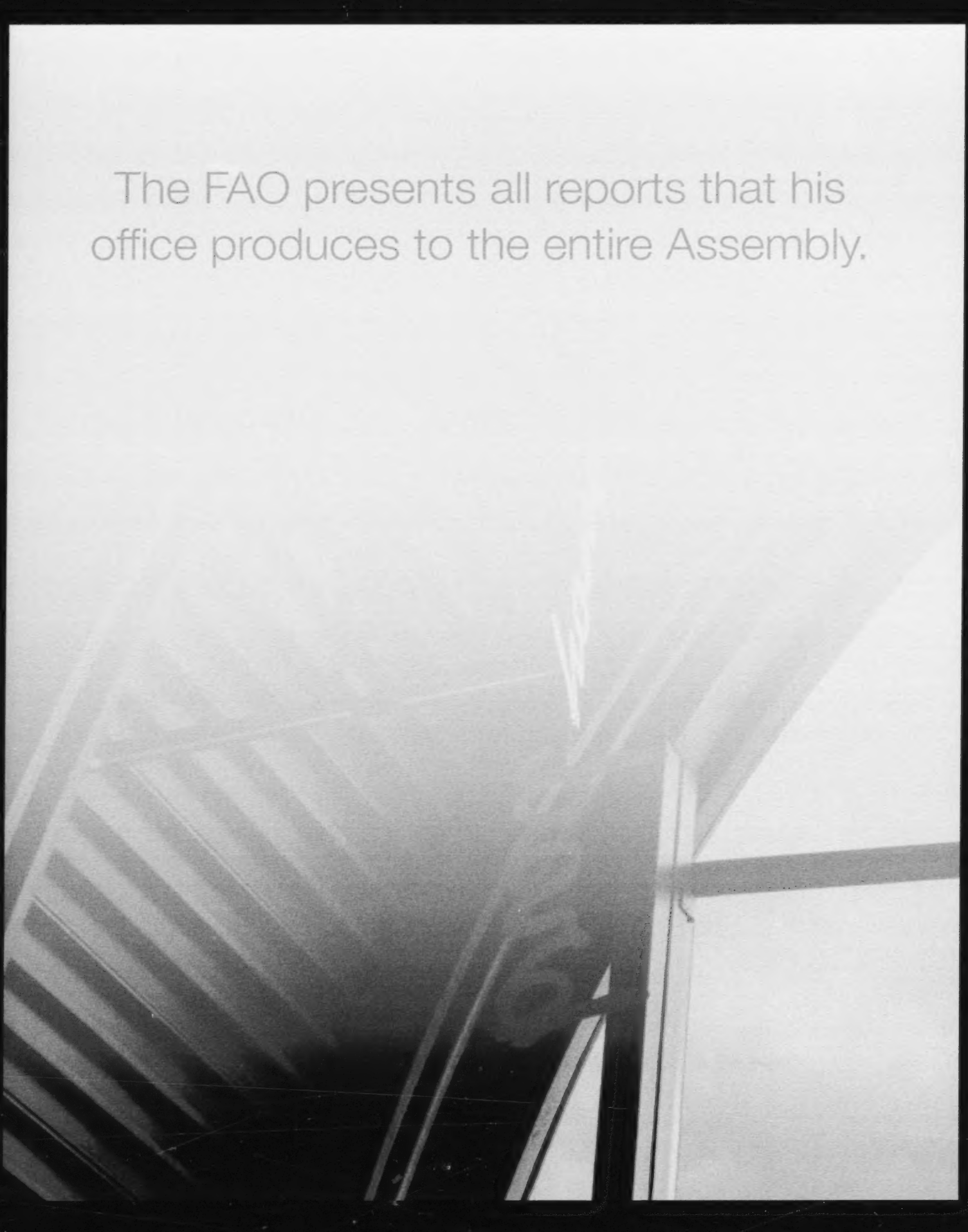
Recommendation

The FAO recommends that MPPs consider launching a review of the scope of the government's disclosure of financial information over the course of the parliamentary financial cycle, and the degree to which it meets their needs at the various stages in that cycle. In the meantime, the FAO will continue to examine the scope of information provided by the government in the budget papers, estimates and other economic and financial reports, and would be pleased to consider research requests on these matters and otherwise to assist any committee examining them.

2 Standing Order 111.

3 Standing Order 110; *Legislative Assembly Act*, RSO 1990, c L.10, s 35.

The FAO presents all reports that his office produces to the entire Assembly.



6 REPORTING AND DISCLOSURE OF INFORMATION

As the FAO's role is to provide the Legislative Assembly as a whole with economic and financial analysis, for the purposes of sections 15 and 16 of the FAO Act, the FAO presents all reports that his office produces to the entire Assembly, even if the research presented in the report was originally requested by a particular committee or MPP.

As mentioned previously, the FAO has begun to publish backgrounders and commentaries on his website. Since the FAO is an officer of the Assembly and makes his information requests on its behalf, he will present the Assembly with an official, printed copy of any online publications derived from government responses to information requests.

The FAO will continue to publish reports when the Assembly is prorogued, but not when it is dissolved for a general election. The FAO makes available any reports he publishes on his website.

Section 15 of the FAO Act requires that the FAO deliver a copy of each report to the Minister of any ministry and head of any public entity to which the report is relevant before the report is publicly released. Where necessary, the FAO will work with the Secretary of the Cabinet to identify which ministries and public entities might be relevant to the content of a report. Where appropriate, the FAO may also share the draft text of reports with the relevant ministries and/or public entities for comment. The FAO and his staff are very grateful for the comments provided by public servants in several ministries on draft reports, which have improved the final versions of the reports and helped the FAO better serve the needs of MPPs.

The FAO is mindful of his obligations under section 13 of the FAO Act to disclose information provided by government only if it is essential to do so for the performance of his duties and provided that the information was not obtained solely from records relating to Ontario's intergovernmental relations, affecting the interests of a third party or Ontario's economic and financial interests, and is not subject to various types of legal privileges. The FAO will take into

The FAO and his staff are very grateful for the comments provided by public servants in several ministries on draft reports.

consideration any indication provided by the ministry or public entity providing the FAO with information that the information might fall under one of these disclosure restrictions.

Where the FAO's analysis is based on publicly available information, especially information already released by the Ontario or federal governments, the FAO will post the datasets and other information used to perform the analysis on his website. For example, the *model used to prepare the FAO's assessment of the financial impact of the partial sale of Hydro One* is available on the website of the Financial Accountability Office.

7 ACCOUNTABILITY

The FAO is subject to several accountability mechanisms that serve to ensure that he is fulfilling the duties with which he has been charged by the Legislative Assembly and is exercising his powers responsibly.

The FAO's annual reports, which summarize the work of the FAO's office, are an important accountability tool. Annual reports, along with the FAO's other reports, are referred to the Standing Committee on Finance and Economic Affairs for their review and comments under section 16 of the FAO Act. The FAO would be pleased to appear before the committee to testify on his reports. The FAO welcomes any recommendations the committee might have to offer when it comes to the manner in which the FAO is performing his duties and exercising his powers.

The FAO is also subject to financial and performance audits by the Auditor General under section 5 of the FAO Act.

The FAO plans to commission an external review of its work after five years, modelled on the external review of the United Kingdom's Office of Budget Responsibility completed in September 2014. The external reviewer will be invited to evaluate the FAO's work based upon international standards for such institutions, adjusted to reflect Ontario's institutional context.

- The International Monetary Fund's standards, which were adopted by the federal Parliamentary Budget Office in recent annual reports, focus on three measures of outcomes: 1) the government's fiscal performance (measured by primary budgetary balance); 2) the accuracy of the government's fiscal forecasts; and 3) media and parliamentary impact of the independent fiscal institution.
- The standards developed by the Jean-Luc Pépin Research Chair at the University of Ottawa and used for the external review of the Office of Budget Responsibility focus on four elements that help assess an independent fiscal institution's performance: 1) institutional, legal and political context; 2) inputs (measured in terms of budgetary and human resources, access to information, degree of independence and stability of inputs);

The FAO plans to commission an external review of its work after five years.

3) outputs (quantitative and qualitative analysis of reports produced); and 4) outcomes (measured through perceptions of stakeholders, particularly media and parliamentarians).

The FAO is also subject to the *Public Sector Salary Disclosure Act, 1996*, and discloses his own salary, as well as those of any staff paid more than $100,000 in accordance with that Act.

In accordance with the practices followed by other officers of the Assembly, the FAO will proactively disclose his expenses, as well as those of his senior staff, on a regular basis on his website.

8 FINANCIAL STATEMENT

In April 2015, the FAO submitted a proposed budget for 2015-16 to the Board of Internal Economy, which approved it later that year. The FAO based the budget for 2015-16 on the experiences of independent fiscal institutions in other jurisdictions, the FAO's professional judgment and the expectations of the Assembly reflected in the Financial Accountability Officer Act, 2013. Since 2015-16 was the office's first full year in operation, the office's expenses reflect both operational requirements, as well as one-time costs associated with acquiring and building out office space, hiring staff, and purchasing computer equipment, peripherals and other office equipment.

The FAO's approved budget for 2015-16 was $2,249,500; the interim actual spending for the fiscal year was $2,030,743. The FAO spent more than expected on setting up the office and producing reports, but this was offset by lower than expected salary (as hiring took place more slowly than expected), rent (due to delay in taking possession of new office space) and IT infrastructure costs.

Salaries, wages and benefits

The FAO's approved staffing for 2015-16 was 14 full-time equivalent (FTE) positions. Hiring took place more slowly than expected due to limited office space, the need to develop a classification system and the FAO's decision to begin releasing reports before the office was fully staffed.

At the end of the fiscal year, the office had 16 positions, but delays in hiring staff meant that the FTE for 2015-16 was approximately nine positions; most staff were hired after the mid-point in the year. Interim actual salary, wages and benefits for 2015-16 were $1,125,284.

Operating expense

The majority of the FAO's operating expense was associated with services, including the cost of rent, translation and printing of reports, recruitment, technical and professional support, and one-time costs for the acquisition and building out of office space. Interim actual expense for services for 2015-16 was $678,927.

The remainder of the FAO's operating exepense was divided between $202,287 in interim actual expense for supplies and equipment in 2015-16, and $24,245

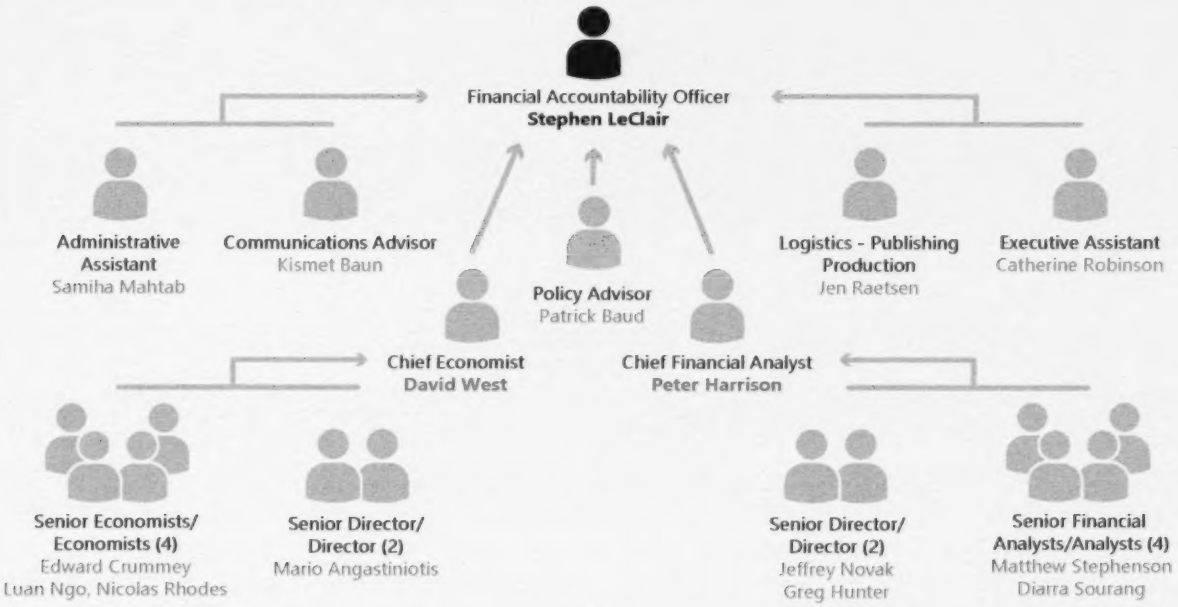
for transportation and communication. A significant portion of the supplies and equipment expense was related to one-time costs, including the purchasing of computer equipment and office furniture. The lower than expected transportation and communication expense reflects staffing delays.

Annual operating expense for the year ending March 31, 2016 (unaudited).

Approved Amount	$2,249,500
Interim Actuals	
Salaries and Wages	$ 943,763
Employee Benefits	$ 181,521
Transportation and Communication	$ 24,245
Services	$ 678,927
Supplies and Equipment	$ 202,287
Interim Actual Total	$ 2,030,743

9 OFFICE ORGANIZATION

Drawing on experience from other independent fiscal institutions, the FAO is operationally a flat organization with relatively limited hierarchy. This supports greater productivity on the part of the staff. In addition, drawing on best practices from other IFIs, emphasis is placed on investing more time in research and analysis, rather than internal processes and administration.



Note: Numbers within parentheses indicates positions once fully staffed.